

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BRENDAN M. MCGUINNESS,
Plaintiff,

VS.

JAMES R. BENDER, ET AL.,
Defendants.

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CIVIL ACTION NO. 05-11738-EFH

**UMASS CORRECTIONAL HEALTH, RUSSELL PHELPS,
MARSHA TANUR, M.D., JASON KAVANAUGH, R.N.
AND LOUISE MERRILL, R.N.'S
EMERGENCY MOTION TO INTERVENE**

NOW COME UMass Correctional Health, Russell Phelps, Marsha Tanur, M.D., Jason Kavanaugh, R.N. and Louise Merrill, R.N. (hereinafter referred to as "UMCH" or "interveners"), by and through their attorneys, and hereby move this Honorable Court, pursuant to Fed.R.Civ.P. 24(a)(2), to allow them to intervene in the above-captioned matter, for the purpose of opposing plaintiff Brendan McGuinness's Motion to Supplement and/or Join Defendants to Plaintiff's Complaint to Ensure a Just Adjudication. In support thereof, the interveners state the following:

1. On July 12, 2006, counsel for the above-named interveners received notice from Department of Correction Attorney William Saltzman, counsel for the defendants in the above-captioned case, that plaintiff McGuinness had moved the Court to supplement his existing Complaint and add UMCH and certain UMCH employees as defendants to this action. *See Affidavit of Attorney Lisa R. Wichter, attached hereto as Exhibit A.*
2. Mr. McGuinness's Motion to Supplement and proposed Supplemental Complaint allege that the above-named individuals violated his Fourteenth Amendment right to due process of law when providing him with medical treatment as a pretrial detainee in the

Massachusetts correctional system. *See Plaintiff's Motion to Supplement and Proposed Supplemental Verified Civil Rights Complaint.*

3. Fed.R.Civ.P. 24(a)(2) states that “upon timely application anyone shall be permitted to intervene in an action: . . . (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.”
4. In the instant case, plaintiff McGuinness’s pending Motion to Supplement and Proposed Supplemental Complaint allege constitutional violations by the interveners. *See Plaintiff's Motion to Supplement and Proposed Supplemental Verified Civil Rights Complaint.*
5. These individuals have an interest relating to Mr. McGuinness’s claims in his underlying transaction with the Massachusetts Department of Correction (“MDOC”), which is the subject of the above-captioned matter.
6. The disposition of the above-captioned matter may, as a practical matter, impair or impede the interveners’ ability to protect their interests, as UMCH and its employees would be named as defendants if plaintiff’s motion were to be allowed.
7. The interveners’ interests are not already represented by already existing parties in the above-captioned matter, as the only parties to that action are employees of the MDOC.
8. Finally, the interveners’ defense in the subject of the above-captioned matter includes questions of constitutional law and fact.

WHEREFORE, UMass Correctional Health, Russell Phelps, Marsha Tanur, M.D., Jason Kavanaugh, R.N. and Louise Merrill, R.N. move that this Court allow their Emergency Motion to Intervene and permit the filing of an Opposition in intervention.

I hereby certify that on August 28, 2006, a true copy of the above document was served upon the *pro se* plaintiff by mail and upon other counsel of record electronically through filing with the ECF system.

/s/ Lisa R. Wichter

Lisa R. Wichter

UMASS CORRECTIONAL HEALTH,
RUSSELL PHELPS, MARSHA
TANUR, M.D., JASON KAVANAUGH, R.N.
and LOUISE MERRILL, R.N.
By their attorneys,

MORRISON MAHONEY LLP

/S/ Lisa R. Wichter

James A. Bello, BBO #633550
Lisa R. Wichter, BBO #661006
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Boston, MA 02210
(617) 439-7500

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BRENDAN M. MCGUINNESS,
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CIVIL ACTION NO. 05-11738-EFH

AFFIDAVIT OF LISA R. WICHTER

I, Lisa R. Wichter, being duly sworn, hereby depose and state the following:

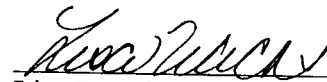
1. I am an associate at the law firm of Morrison Mahoney LLP, with offices located at 250 Summer Street, Boston, MA 02210. I am duly licensed to practice law, and I am in good standing in the Commonwealth of Massachusetts.
2. I am co-counsel for the proposed defendants, UMass Correctional Health, Russell Phelps, Marsha Tanur, M.D., Jason Kavanaugh and Louise Merrill, in the above-referenced matter. I have personal knowledge of all facts set forth herein, and I am familiar with plaintiff's allegations and the procedural history of this case.
3. On July 12, 2006, counsel for the above-named proposed defendants received notice from Department of Correction Attorney William Saltzman, counsel for the defendants in the above-captioned case, that plaintiff McGuinness intended to move to supplement his existing Complaint and add UMCH and certain UMCH employees as defendants to this action.
4. On July 12, 2006, the plaintiff, Brendan M. McGuinness, a *pro se* plaintiff, filed a Motion to Supplement and/or Join the above-named defendants to Civil Action No. 05-11738-EFH, along with a Proposed Supplemental Complaint. However, this Motion

was not docketed by the Court until August 24, 2006. *See United States District Court Docket, Pleading #35.*

5. The above statements are true and accurate and based upon my personal knowledge.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY

THIS 28TH DAY OF AUGUST, 2006.

A handwritten signature in black ink, appearing to read "Lisa R. Wichter", is written over a horizontal line.

Lisa R. Wichter (BBO #661006)